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March 18, 2022

BY ECF

Hon. Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

MEMO ENDORSED

Re: **Doe v. Cahill**
Civil Action No. 20 CV 03908 (KPF)
MCB File No. 00001-086947

Dear Judge Failla:

We represent the defendant Kevin Cahill, M.D. (“Dr. Cahill”) in the above-referenced matter.

Notwithstanding the expired deadline to complete fact discovery, but in light of various scheduling issues, plaintiff’s counsel and I cooperatively agreed to complete Dr. Cahill’s deposition, and the deposition of some non-parties, after the fact discovery deadline, but before the deadline for expert discovery expired. Accordingly, we scheduled Dr. Cahill’s deposition for March 22, 2022.

Earlier today, Dr. Cahill’s personal attorney gave me two letters from Dr. Cahill’s physicians. One states that Dr. Cahill suffers from congestive heart failure related to progressive valvular heart disease, hypertension and atrial fibrillation, and that his cardiac condition causes limiting shortness of breath and fatigue with minimal activity. The physician wrote: “I do not advise he [Dr. Cahill] be exposed to the rigors of a deposition. If he has to be exposed to any such activity, it should be strictly limited to a short period of time.”

The second letter, also from one of Dr. Cahill’s physicians, states that Dr. Cahill is currently 85 years old, is being treated for severe aortic stenosis, heart failure, acquired hypothyroidism and secondary hypopituitarism post-resection of pituitary tumor. That physician concluded that “Dr.

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Cahill's medical condition is critical and can easily decompensate. Any activity can compromise his medical condition. Patient is at risk of adrenal crisis and unstable angina."

In light of those two letters, I asked plaintiff's counsel if she would be willing to take Dr. Cahill's deposition by written questions pursuant to Rule 31 of the Federal Rules of Civil Procedure. She did not consent. Accordingly, it is respectfully requested that Your Honor order plaintiff's counsel to serve written questions instead of taking an oral deposition of Dr. Cahill.

Thank you for Your Honor's attention to this matter.

Respectfully submitted,

MARTIN CLEARWATER & BELL LLP



Gregory J. Radomisli (GJR 2670)

Application DENIED without prejudice to its renewal. The Court's case management plan provides, "This Order may not be modified or the dates herein extended, except by further Order of this Court for good cause shown." (Dkt. #35 at 8). Accordingly, the parties were expressly not authorized to "cooperatively agree" to complete depositions after the fact discovery deadline. The Court afforded a generous schedule to the parties for discovery, and the parties have not explained -- in sufficient detail and with a timeline of what was done when -- why that schedule was insufficient. The Clerk of Court is directed to terminate the pending motion at docket number 43.

Dated: March 21, 2022
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE